

U.S. General Services Administration  
Office of Inspector General  
August 24, 2001



## **SPECIAL REPORT**

# **MAS PRICING PRACTICES: IS FSS OBSERVING REGULATORY PROVISIONS REGARDING PRICING?**

Jointly prepared by the  
Office of Audits and the Office of Counsel

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U.S. GENERAL SERVICES ADMINISTRATION  
Federal Supply Service

FCO/PAT

June 21, 1999

MEMORANDUM FOR EUGENE L. WASZILY  
ASSISTANT INSPECTOR GENERAL  
FOR AUDITING (JA)

FROM: WILLIAM N. GORMLEY /sl  
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION (FC)

SUBJECT: Office and Scientific Equipment Center Use of IG Audits  
During Class 36 MAS Extensions Negotiations

The Office of Acquisition Management (FCO) reviewed the eleven, pre-award audit reports and subsequent negotiations documentation on the audits, in support of negotiations of three year extension of contracts under the 36 IV multiple award schedule. The estimated value of the extension of each contract audited was substantial. In all but two audits, the reports had concluded that the prices as proposed were not fair and reasonable.

In evaluating the Office and Scientific Equipment Center's (FCG) response to the audit, it is understood that the audit recommendations were advisory and do not set negotiation objectives. The negotiation documentation reviewed indicated that negotiators reviewed and considered the audit reports. Supplemental information in the contracts files revealed, that in most instances, the negotiator discussed the audit report findings with the cognizant Office of Audits (JA) auditor. In the majority of cases where the audit reports recommended improvements, negotiations resulted in improved prices or terms. Copies of the negotiation memoranda were provided to the IG Office of Audits.

A common thread, found throughout the JA audit reports and FCG negotiation documentation, was comparisons with commercial contracts with different terms and conditions. Neither the audit reports nor the negotiators made price adjustments to compensate for the differences, as directed in the GSAR policy. The audit reports cited the commercial practice as the negotiation target without considering differences. The negotiators totally excluded from comparisons commercial agreements, for relatively minor differences, or differences which should have been addressed through price adjustments. (See Attachment 1)

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Another practice found was the auditors considering each commercial contract as a commercial sales practice. In the Commercial Sales Practices format (CSP) instructions calls only for the disclosure of "commercial policies or standard practices." Instances of a single contracts or only an instance of better pricing on a specific model, does not necessarily represent a contractor's commercial practice.

The issue of the LTOP lease rate was discussed in all the audits, comparing the lowest available LTOP rate to other offerors. In one instance this resulted in a lowering of the proposed rates. Neither the auditors nor the negotiators attempted to compare the proposed rates with then current market rates.

During discussions with contracting personnel, it was found that there is a widely held belief that because the Price Reduction Clause now permits agencies to negotiate better prices on a per order basis, the MAS most favored customer objective must consider each commercial competitive situation as if it were equivalent to a vendor offering a comparable special discount to a FSS customer, rather than being used to negotiate the schedule price.

The overall conclusion is that the audit results were considered in setting the negotiations objectives. Had the GSAR pricing policy of evaluating differences, rather than accepting or rejecting comparables been followed, improvements in the contract pricing may have been achieved.

The following remedial actions are being taken: FCO will issue a Procurement Information Bulletin and present additional training to the centers on proper techniques for evaluating differences between commercial contracts and multiple award schedule contracts. FCG is instructing their specialist and contracting officers to rigorously enforce the GSAR pricing instruction in evaluate requests for modifications applicable to these contracts, and not to give undue influence to the results of previous negotiation results.



## ATTACHMENT 1: Examples of Not Evaluating Differences

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### NEGOTIATORS:

1. One PNM cited the IFF as a reason to exclude a commercial contract from consideration. The applicable consideration for IFF is well established.
2. There is a wide perception that competitive state contracts are not to be considered in evaluating offers. This is inconsistent with our historical pricing practices and a recent PIB which cited state contracts are good market indicators. Reasons for differences included the limited geographical area; however, this reason was applied to states including California, Utah, Hawaii, and Washington that include some of the remotest areas in the country. Another reason given was a single award; however, many promises of single awards were illusory.
3. Several commercial contracts were excluded because of the evaluation system used to award them: total product cost (a modified life cycle cost). Rather than excluding the contract, similar evaluations should have been run using GSA pricing, which would demonstrate that our prices are or are not reasonable. (see also auditors)
4. Commercial contracts were eliminated because they were over the MO, even when they were for estimated quantities over time; therefore, MO are not applicable.
5. Commercial contracts were excluded because they included a "lock" on buying supplies or maintenance. In the instance of maintenance, it can reasonably be assumed that most purchasers of copier machines will purchase the maintenance, as that is the standard practice. If that is too broad an assumption, under MAS contracts, vendors can offer superior, combination pricing when a customer agrees to purchase with maintenance; therefore, the commercial contracts were not out of scope.
6. When confronted with the issue of rentals including supplies as compared to the normal schedule rental without supplies, the negotiators did not adjust the rental rate for the cost of supplies. Estimates of copies per unit of supply are available either from the vendors, trade publications or center engineers. This figures can be used to adjust rentals including supplies to MAS conditions. (see also auditors below)
7. Rental plans were excluded based on the period of payment: quarterly in advance in lieu of monthly post pay. This is a relatively easy adjustment using the Excel spreadsheet to calculate the value of money over the three month period.

### AUDITORS:

1. The audit reports were inconsistent in their evaluations of rental plans and maintenance plans with fixed monthly charges. There is only two ways to



## ATTACHMENT 1: Examples of Not Evaluating Differences

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reasonably compare these plans (1) either both the monthly base and the per copy charge must be better, or (2) use reasonable estimates of actual customer usage. Information on estimates of customer usage are available from the industry publications, from FSS experience with the cost per copy program or FSS technical personnel. In the one audit where this was done (MITA), the FSS prices appear reasonable compare to the commercial plans. Adjustments could have been made for usage of supplies as stated in #4 under negotiators.

2. Comparisons of rental plans including supplies should have been to the contracts Cost per Copy or Flat Rate plans, as more comparable than rentals.
3. Comparison to dealer pricing was made without consideration of dealer functions.

## ATTACHMENT 2: Major Audit Issues

This attachment contains information that the Office of the Inspector General has determined is proprietary. Request for this attachment should be directed to the Office of the Inspector General, Office of Counsel.



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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OCT 12 2001

MEMORANDUM FOR DONNA D. BENNETT  
COMMISSIONER  
FEDERAL SUPPLY SERVICE (F)

FROM: DANIEL R. LEVINSON *Daniel R. Levinson*  
INSPECTOR GENERAL (J)

SUBJECT: FSS Response to OIG Special Report on Multiple Award  
Schedule Pricing Practices

From reading the Federal Supply Service (FSS) response to the Special Report on Multiple Award Schedule (MAS) pricing practices issued by our office on August 24, 2001, it is clear that the issues we raise have been given substantial attention by FSS officials. It is also clear the two organizations remain apart in our views of current Multiple Award Schedule (MAS) procurement practices and precisely, what, if anything needs to be addressed to enhance program pricing activities. We are pleased that the FSS Commissioner has expressed an open willingness to explore and resolve the issues in contention. We welcome that opportunity.

The FSS response to our Special Report highlights many of the efforts taken in recent years to enhance the MAS program. We note particularly FSS's proposals to institute certain types of contract review procedures, under which significant acquisitions would undergo a review process to ensure FSS is awarding quality contracts. While we acknowledge these efforts and commend FSS for making improvements, we also note that most endeavors cited are only tangentially linked to the three major issues in the Special Report. Absent from FSS actions to date, and one of the recommendations contained in the Special Report, is the development of a performance measure to assess the effectiveness of pricing efforts on MAS contracts.

Our report is centered on the need for FSS to more consistently apply available means to achieve contract pricing in line with the most-favored customer (MFC) concept. We do not take issue with the MAS program, which clearly provides Federal customers and taxpayers significant benefits, many of which are enumerated in the FSS response. Nevertheless, we believe that MFC is, as we state in the report, a touchstone of the MAS program and is the means by which FSS can most effectively aggregate the purchasing power of the Government and achieve volume pricing.





With that said, we do not disagree with FSS's characterization of MAS pricing policy as stated in the response to Findings 1 and 2. MFC is a negotiation objective and because of differing terms and conditions, there may be legitimate reasons why the best price cannot be achieved. In the Special Report, we categorized a particular negotiation as having achieved MFC – even if the price negotiated was not the actual best discount or price – as long as the differing terms or conditions were considered and valued by the contracting officer. In most of the negotiations in which we found MFC had not been achieved, the failure was that contracting officers would simply reject a commercial customer when faced with differing terms and conditions rather than evaluate and quantify them. That this is contrary to GSA policy is also noted in the June 1999 FCO review that is attached to the FSS response. That FCO review, which was reviewed and considered for the Special Report, specifically states that “the negotiators totally excluded from comparisons commercial agreements, for relatively minor differences, or differences which should have been addressed through price adjustments.” This finding is also at the heart of our Special Report.

In addition to these general comments, we also wanted to bring the Commissioner's attention to the following particular points raised in the FSS response:

- FSS responds that the Special Report is based on analysis of only “31 of the 6000+ [MAS] contracts that were negotiated during the 1998-1999 timeframe.” We note that, while the MAS program has well over 6000 contracts in place, a large majority of the purchase dollars flowing through the program are concentrated in a few hundred contracts held by an even smaller number of vendors. Our sample of 31 contracts that formed the basis for our first finding (the second finding covered 80 contracts) had an estimated sales volume of \$7.4 billion. As stated in the Special Report, our review was based on MAS contracts negotiated in the 1998-1999 time period, because they were the last substantial set of contracts subject to preaward audit until this most recent round of copier contracts.
- In its response, FSS agrees that preaward audits are a valuable tool to achieving a fair and reasonable price and then notes that, in the past year, all copier offers valued at over \$1 million were submitted for audit, as well as some information technology and furniture offers. We point out that it is not sufficient to simply submit an offer for preaward audit; that audit also needs to be supported and used effectively in negotiations to form pricing decisions. The recent round of preawards on the copier contracts has, in fact, only served to reinforce the concerns we raised in the Special Report regarding negotiations quality. While we are not in a position to



comment at this time across-the-board on every negotiation and any resulting price impact, as the contracts were all very recently awarded, we are aware – as is FSS – of several instances of vendor recalcitrance in providing audit-requested information; insufficient support by contracting officials in obtaining that information; and FSS ultimately deciding to award contracts without benefit of the preaward audits that were in progress.

- In its response to Finding 3 on using preawards effectively, FSS takes issue with a chart that notes the decreasing number of preawards from FY 1990 through FY 2000 and also gives the dollars audited for each of those years as well as the percentage of MAS program dollars covered. We agree that the percentage of MAS program dollars covered by audit may be impacted somewhat in any given year in which the actual purchases of services greatly exceed estimates at the time of award (or extension). Nevertheless, the trend noted of dramatically decreasing numbers of preawards and dollars audited holds true and serves to support our overall conclusion that preawards are not being requested or effectively used. Another chart on page 36 of the Special Report graphically illustrates the sharp drop in numbers of preawards against the exponential growth of MAS sales dollars in the same time period.

The issues we discuss in our Special Report center on three areas: FSS is not consistently achieving MAS pricing; many contract extensions we reviewed lack adequate price analysis; and preaward audits are not being used effectively to negotiate better pricing. While FSS has clearly made changes in many areas, fundamentally these three issues remain unaddressed in any comprehensive or meaningful fashion. We would be happy to work with FSS in any review or other efforts it may undertake on these issues. We believe that the MAS program generally is a very effective vehicle for Government purchases of commonly used products and services, which can and should achieve significant savings for the taxpayer. Our principal goal with this report is to help insure that it continues to do that.